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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revisions to Price Cap Rules)
for AT&T)

CC Docket No. 93-197

To: The Commission

COMMENTS OF WILTEL, INC.

September 21, 1993

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COMMENTS OF WILTEL, INC.

WilTel, Inc. ("WilTel"), hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹

Further deregulation of AT&T cannot be justified at this time. Far-reaching changes in the interexchange market will take place over the next few months and those changes could enhance AT&T's ability to engage in anticompetitive and anti-consumer conduct. The Commission should devote its resources to ensuring that price caps fulfill their intended functions, rather than discarding them prematurely.

¹FCC 93-327 (released July 23, 1993).

I. AT&T WILL CONTINUE TO POSSESS MARKET POWER FOR THE FORESEEABLE FUTURE

AT&T will undoubtedly repeat its assertions that the interexchange market is fully and intensely competitive.² It may restate its allegation that continued regulation of its prices somehow violates an understanding reached at the time of divestiture. We also may hear a repetition of arguments relating to a "level playing field," even though the field continues to tilt in AT&T's favor despite the Commission's efforts to promote competition.

Nonetheless, the extent of AT&T's continued market dominance is surprising, and runs counter to the expectations of those who predicted a fully competitive market would develop within a decade of divestiture. Those expectations made sense when AT&T's market share was dropping at a rate of from 3.4 to 5.7 percentage points per year, as it did from 1986 to the first quarter of 1990.³ However, AT&T's annualized market share loss has not exceeded 2.8 points in any quarter since mid 1990.⁴ With this relative stabilization

²Nondominant IXC's do face intense competition, but that does not mean that AT&T is subject to the same level of competitive pressures.

³See Industry Analysis Division, FCC, Long Distance Market Shares, First Quarter, 1993, at 14. These figures are based on the change in AT&T's share of toll revenues in each quarter as compared to the corresponding quarter in the prior year.

⁴See id. In the last ten quarters for which data are available (the last quarter of 1990 to the first quarter of 1993), AT&T's loss of market share percentage averaged 2.05 from the prior year. In the ten quarters preceding that period, AT&T's average loss was 4.36, over twice as great.

of market share, AT&T's market power continues to require active Commission regulation.

II. PENDING REGULATORY CHANGES COULD ADVERSELY AFFECT AT&T'S COMPETITORS

AT&T's competitors have directly introduced lower prices and technological innovations to the marketplace and, in addition, made AT&T much more responsive to customer needs. Smaller IXC's, such as WilTel⁵ and resellers,⁶ play a role greatly disproportionate to their small market shares; their survival is crucial to the well being of the interexchange market. Rules which limit AT&T's ability to engage in unreasonable pricing practices (practices which AT&T could not adopt in a fully competitive market) should remain in place to ensure that these smaller IXC's remain effective competitors. Nondominant carriers already face a formidable set of obstacles without the threat of renewed dominant carrier abuses by AT&T.

On December 1, the pricing structure for switched transport will change, potentially creating dramatic increases

See id. The reduced growth of competition coincides with the introduction of price cap regulation of AT&T.

⁵See Rotan Mosle Research, The Williams Companies, Aug. 31, 1988 at 5 (WilTel in many ways "represents the lifeline to many of the regional long distance companies.").

⁶IXC resellers serve an important role as arbitragers, limiting a dominant carrier's ability to engage in market segmentation.

in the total costs of smaller IXC's.⁷ In addition, the availability of expanded interconnection arrangements for switched access, while it may eventually lead to competition in that market, creates an opportunity for AT&T to decrease its access charges through relatively minor network reconfigurations; other IXC's, which rarely had the option of locating facilities at BOC locations, may not have a comparable opportunity to reduce their charges.⁸

In practice, price caps have not precluded AT&T from adopting below-band rates; requests to lower prices are almost automatically approved. The price cap price justification process, however, at least provides a yardstick by which AT&T's price performance can be measured. That yardstick may discourage anticompetitive practices at a time when AT&T's competitors are vulnerable to such tactics due to changes in LEC access regulation.

⁷Switched transport charges are a major portion of an IXC's total costs. WilTel and other IXC's are still evaluating the impact of the proposed transport rates recently filed by the larger LECs, but it appears that costs will increase substantially for all but the two or three largest IXC's.

⁸The fact that access charges are priced well above cost gives an additional unearned advantage to carriers that can avoid paying a portion of such charges as compared to IXC's that have no realistic alternative to LEC access.

III. OPTIONAL CALLING PLANS SHOULD BE SUBJECT TO SPECIAL PRICE CAP TREATMENT

AT&T's optional calling plans (OCPs) are not a separate product; they are merely discounted or repriced MTS. These pricing differences do not make the two categories of service unlike.⁹ Therefore, the Commission has a responsibility to ensure that AT&T customers who do not or cannot use OCPs are not subject to unreasonable discrimination.¹⁰

Price cap regulation has had no discernable effect on AT&T's ability to lower the rates of its OCPs relative to its other MTS rates and may actually encourage it to increase its standard rates to offset OCP decreases. The Commission should restrict AT&T's ability to offer targeted discounts without passing on some of the benefit of those discounts to its smaller residential and business customers. Such customers often have remained loyal to AT&T but, due to lack of information or sophistication, may not request OCP rates. Other AT&T customers have calling volumes which are too low or variable to allow economic use of OCPs.

The Commission can expand the benefits of AT&T's competitive responses by linking future decreases in OCP rates to decreases in AT&T's standard MTS offerings. Dividing Basket 1 into OCP and non-OCP sub-baskets and requiring that

⁹MCI Telecommunications Corp. v. FCC, 917 F.2d 30 (D.C. Cir. 1991) ("Pricing differences . . . cannot be a basis for finding the services unlike").

¹⁰See 47 U.S.C. § 201(b) (1988).

the OCP index not fall below the non-OCP index would allow all of AT&T's smaller customers to benefit when AT&T lowers its OCP rates.¹¹

IV. AT&T'S COMMERCIAL SERVICE RATES SHOULD NOT BE DEREGULATED

AT&T's proposal to deregulate commercial Basket 1 services would mean that those most in need of regulatory protection, residential customers, would receive the least. AT&T would make such customers ineligible for commercial services; that use restriction would violate long-standing Commission policies designed to prevent dominant carriers from engaging in market segmentation.¹²

It is not clear that small commercial users would benefit either. AT&T may increase the rates for all or some of those customers in order to concentrate its focus on larger businesses. The potential withdrawal of AT&T competitors from rural and suburban exchanges, due to increases in transport rates, may enable AT&T to impose price hikes on the customers located in those areas. Finally, AT&T may engage in predatory

¹¹AT&T has already established a substantial differential between OCPs and other Basket 1 services. NPRM, ¶ 3. WilTel's proposal would not erase the differential, but it would keep it from increasing.

¹²See NPRM, ¶ 12; Amendment of Section 64.702 of the Commission's Rules & Regulations (Third Computer Inquiry), CC Docket No. 85-229, 2 FCC Rcd 3035, 3051 (1987) ("there is a strong federal policy against customer or use restrictions in tariffs").

pricing where it finds it economically feasible to do so, resulting in short-term cost reductions more than offset by post-predation increases.¹³

The distinction between commercial and residential local service has several historical and economic bases. Charging higher rates to businesses and other non-residential users may be justified by the higher volume of calls typically placed to and by such customers, their more frequent use of peak-period service, their greater ability to pay the shared costs of the local network, the greater value they receive from connection to that network and the desire to promote universal service.

These justifications do not apply to the interexchange market.¹⁴ MTS is provided pursuant to usage-based charges which vary by time of day and frequently by the distance of the call, so that calling patterns result in rates which can

¹³Access rate structures that contain unjustified volume-driven discounts would make predation feasible. AT&T would have a strong incentive to gain as much market share as possible, even if it must incur short-term losses. The excessive volume discounts would serve as a barrier to post-predation entry because IXCs beginning to serve a new area would not have sufficient market share to compete effectively. Such conditions are not pure conjecture. See, e.g., Ex Parte filing of Bell Atlantic, CC Docket No. 91-213, filed Sept. 15, 1993 (under new transport rate structure, AT&T's rates would decrease 13.47%, Sprint and MCI's rates would increase an average of 16.93%, other carriers' rates would increase an average of 25.26%).

¹⁴To the extent they do apply, residential MTS should be priced lower than commercial MTS.

reflect cost causation.¹⁵ Low-cost interexchange service, while vital to the nation's economic well being, is not a prerequisite for access to emergency services as is affordable basic local service.

Conditioning eligibility for preferential rates on a customer's local service classification presents insurmountable problems of fairness and administration. Whether certain households qualify for local residential rates varies from state to state and often from LEC to LEC. A "telecommuting" employee might be treated as a residential customer in one exchange and as a business customer in a neighboring exchange operated by a different LEC.¹⁶ Using these inconsistent local classification schemes as a basis for interstate rates would create unjust discrimination.¹⁷

¹⁵Local service is most often provided on a flat rate basis. Some customers use a per-call option designed for lower calling volumes and in some areas some or all calls are provided on a measured basis. Generally, however, individual local calls are not billed in a manner tied closely to costs.

¹⁶See generally Request for Approval of Tariff Filing to Revise the Regulations for the Application of Rates for Business and Residence Service by BellSouth Telecommunications, Inc., 92 Fla. PSC 12:539, 1992 Fla. PUC LEXIS 1801 (changing criterion for classification "in response to the growing trend where subscribers work at home").

¹⁷This discrimination, in turn, invites gamesmanship on the part of customers and possibly state commissions or LECs (which might attempt to maximize access revenues by making residences eligible for lower AT&T prices). To obtain lower AT&T rates, a household might be willing to pay slightly higher local business rates even if its service were used exclusively for non-business communications. Regulations could be adopted at the state level to blur the residential/business distinction.

V. PRICE CAP RULES SHOULD PREVENT PRICE GOUGING OF CUSTOMERS WITH SPECIALIZED NEEDS

WilTel does not provide analog private lines nor does it purchase such services. It does, however, sympathize with the customers of such services who may have little or no alternative to AT&T and could be subjected to unreasonable rates if price cap restrictions are removed. WilTel's experience indicates that price cap procedures which lump disparate services into overly broad categories allow dominant carriers to impose outrageous rate increases;¹⁸ such increases are used when customers purchase and rely on services which a dominant carrier no longer wishes to provide or for which it faces limited competition. AT&T has the same ability and incentive to impose excessive rate hikes on its analog private line customers as it had when price caps were instituted.¹⁹ Consequently, those services should remain in a separate basket.

VI. CONCLUSION

The interexchange market, before the adoption of price caps for AT&T, rapidly moved toward full competition from near

¹⁸Southwestern Bell, thwarted in its efforts to cease offering dark fiber, instead raised the rates by 92% within a two-year period, 1993 Annual Access Tariff Filings, Memorandum Opinion & Order Suspending Rates & Designating Issues for Investigation, CC Docket No. 93-193, DA 93-762, ¶ 50 (Common Carrier Bur., released June 23, 1993) (citing MCI petition).

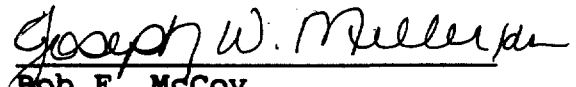
¹⁹ARINC indicates that even the current price cap rules are incapable of preventing rate hikes in excess of 1000% in a single year. Common Carrier Week, Sept. 14, 1992.

monopoly. After price caps replaced rate-of-return regulation, the growth of competition slowed considerably but still continues.

Pending and recent changes in the regulatory environment could reduce the competitive vigor of smaller IXCs. The Commission should defer further deregulation of AT&T until it can assess the effects of the those changes on the interexchange market and until further declines occur in AT&T's market power.

September 21, 1993

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CERTIFICATE OF SERVICE

I, Diana Neiman, do hereby certify that on September 21, 1993, a copy of the foregoing "Comments of WilTel, Inc." in the matter of Revisions to Price Cap Rules for AT&T (CC Docket No. 93-197) was served (except as indicated below) by first class mail, postage prepaid, on the following:

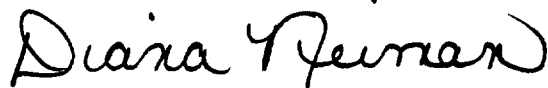
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